Supreme Court, U.S.
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No. 01-1735

IN THE

Supreme Court of the United States

TOM EASTON and ELENA EASTON,
and as successors in interest of decedent
MARGARETHA MARY WINCHESTER,

Petitioners,

v.

JIM MAREADY, DEL NORTE SHERIFF;
DEPUTY SHERIFF THOMAS HOCKABOUT;
DEPUTY SHERIFF GERALD HARWOOD;
DEPUTY SHERIFF GARTH GOODRICH;
STEPHAN BROHMER, DIRECTOR DEL NORTE ADULT
PROTECTIVE SERVICES; and DOES ONE through TEN,
inclusive, each in their individual and official capacity,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Margaretha Winchester resided at her home in Crescent City with her son, plaintiff Tom Easton (Easton), and Mr. Easton's wife, Elena Easton. She had suffered from dementia since 1998. On September 26, 1998, the 88-year-old Winchester collapsed outside the residence after returning home from a walk.

Winchester's physical and mental condition declined rapidly after this incident, and she was treated at a local hospital on October 13. She was prescribed medication for a urinary tract infection and discharged.

Once home, a home healthcare worker (Don Morneau) monitored her condition, with Easton's consent. On October 19, the home healthcare worker discovered that Easton had not filled the prescription to treat his mother's infection. The next day, Morneau strongly urged Easton to take Winchester back to the hospital for treatment of the infection, an easily treatable medical condition. Easton refused and indicated he did not want to have medical personnel attend to her. At this time, Easton did not have a power of attorney to make health care decisions for Winchester and he had not been appointed her guardian. Morneau then told Easton it was his duty to report possible elder abuse.

Morneau then reported the refusal to allow medical care to Winchester's treating physician (Dr. Sara Kossuth). Dr. Kossuth then called 911 and reported that Easton would not allow medical personnel to treat Winchester's infection, also suggesting that his neglect constituted elder abuse. The physician also reported that Winchester's infection posed a risk of falling blood pressure, which could be

life-threatening, and requested that law enforcement personnel intervene and assist in having Winchester brought to the hospital.[1]

Three Del Norte County sheriff's deputies were dispatched to the Easton residence in response to the physician's request. A deputy (Deputy Hockabout) informed Easton that they had been dispatched to assist in having Winchester taken to the hospital for necessary medical care. Hockabout then entered the house, followed by an emergency medical technician (EMT) from Del Norte Ambulance. The EMT reported that Winchester's blood pressure was very low. Deputy Hockabout observed that Winchester appeared in very poor health. She was completely unresponsive to his questions. At all times her eyes were open. She stared directly at him without any response. Deputy Hockabout then concluded that Winchester was severely disabled — both mentally and physically. She appeared malnourished, weak and frail. Deputy Hockabout determined that Winchester was unable to understand the risks to her health, and allowed medical personnel to transport her to the hospital by ambulance.

Petitioners filed suit in the Del Norte County Superior Court, alleging violation of 42 U.S.C. § 1983 based on the Eastons' Fourth Amendment rights. The complaint also alleged that the County violated California's Elder Abuse Act by failing to obtain a search warrant before entering the Easton's home.

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1. In a memo of a prior conference call between Morneau, Dr. Kossuth and Chris Van Camp, a social service worker, it is noted, "Dr. Kossuth wants patient in ER for assessment 'whatever it takes.'"

The state trial court granted respondents' motion for summary judgment and petitioners appealed. In an unpublished opinion[2] ("*Easton II*"), the California Court of Appeal affirmed the trial court's granting of summary judgment, based on an immunity provision in the Elder Abuse Act, previously addressed by the court in *Easton v. Sutter Coast Hospital*, 80 Cal. App. 4th 485 (2000), *cert. denied*, 531 U.S. 1084, 148 L. Ed. 2d 686, 121 S. Ct. 790 (2001) ("*Easton I*"). Both *Easton I* and *Easton II* are based on the same underlying incident, i.e., the removal of Winchester from the Easton residence in order to render medical treatment.

In *Easton I*, the appellate court construed California Welfare and Institutions Code § 15634 (a provision of the Elder Abuse Act) to confer absolute immunity for persons who provide access to victims of suspected abuse. *Id.*, 80 Cal. App. 4th at 495-496. Under the facts presented in this case, the court in *Easton II* concluded that the same statute "provides absolute immunity to the sheriff's deputies who entered the home without a warrant in order to allow [ ] paramedics to remove Winchester." *Easton II*, 2001 WL 1511263 (Cal. App. 1 Dist.), *3.

Petitioners then filed a petition for review with the California Supreme Court, which was denied.

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2. A copy of the decision is attached as an appendix to the petition for writ of certiorari, and is available on Westlaw (2001 WL 1511263).

REASONS FOR DENYING THE WRIT

A. The Issues Presented To This Court Were Not Raised Below.

Petitioners present two issues. First, they claim California's Elder Abuse Act is facially unconstitutional under the Fourth Amendment of the United States Constitution. Second, petitioners (apparently) assert that this legislation conflicts with 42 U.S.C. § 1395cc(f)(1)(A)(i), a provision of the Patient Self Determination Act.[3]

Neither of these issues were raised or addressed in the proceeding below.

The complaint alleged respondents violated § 1983 and the Elder Abuse Act, based on the entry into petitioners' residence without a search warrant. Petitioners did not challenge the constitutionality of the Elder Abuse Act, nor did they allege that the Act conflicted with the so-called Patient Self Determination Act.

Likewise, petitioners did not question the validity of the Elder Abuse Act in their brief filed in the California Court of Appeal or their petition for review to the California Supreme Court. To the contrary, they argued that "California law is in accord with federal law" with respect to the right of patients to refuse medical treatment.[4]

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3. The second issue is articulated by petitioners as follows: "May California's Elder Abuse Act legislate away an elder patient's right to refuse unwanted medical treatment under the Patient Self Determination Act, 42 U.S.C. § 1395cc(f)(1)(A)(i) without violating her civil rights under 42 U.S.C. § 1983?"

4. Petitioners' opening brief, filed in the California Court of Appeal, pp. 38-39.

The failure of petitioners to raise either of the issues in the proceedings below is reflected in the Court of Appeal's decision in *Easton II*. That is, a constitutional challenge to California's Elder Abuse Act under federal law was not addressed in that decision, nor does the court indicate that the issue was raised by petitioners. Rather, the issue before the appellate court was whether or not California's Elder Abuse Act provided immunity for respondents.[5]

Petitioners ignore the well-established rule that, on petition for certiorari from state court decisions, this Court does not decide federal issues "not pressed or passed upon below." *Campbell v. Louisiana*, 423 U.S. 392, 401 (1998); *Illinois v. Gates*, 462 U.S. 213, 218-220 (1983); *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969); *Crowell v. Randell*, 10 Pet. 368, 391-398 (1836). Indeed, the Court has opined that, under 28 U.S.C. § 1257,[6] it lacks jurisdiction to even consider federal questions not raised or decided by the highest state court below. *Crowell*, 10 Pet. at 391; *Whitney v. California*, 274 U.S. 357, 360 (1927); *Cardinale*, 39 U.S. at 438 ("It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of State court decisions.").

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5. The appellate decision also mentioned, in passing, petitioners' claim that the trial court violated their constitutional right to a jury trial by granting summary judgment 2001 WL 1511263*4.

6. Section 1257 provides that:

> [F]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . . (3) by writ of certiorari, . . . where any title, right, privilege or immunity is specially set-up or claimed under the Constitution, treaties or statutes of . . . the United States.

The policies giving rise to the so-called "not pressed or passed upon below" rule were explained by the Court in *Cardinale v. Louisiana*, *supra*:

> In addition to the question of jurisdiction arising under the statute controlling our power to review final judgments of state courts, 28 U.S.C. § 1257, there are sound reasons for this. Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionally. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds. [*citation omitted*] They should be given the first opportunity to consider them.[7]

Supreme Court Rule 14 requires that a petition for review of a state court judgment include a statement specifying

> . . . the stage and the proceedings, both in the court of first instance and in the appellate courts, when the federal question sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with

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7. 394 U.S. at 439.

> specific references to the places in the record where the matter appears . . . so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari.

Consistent with Supreme Court Rule 14, courts have held that the petitioner has the burden of demonstrating to this Court that the federal questions were raised or decided by the state court below. *Street v. New York*, 394 U.S. 476, 482 (1969); *Campbell*, 523 U.S. at 401; *Fuller v. Oregon*, 417 U.S. 40, 50 n.11 (1974). This Court has also stated that, when "the highest court has failed to pass upon a federal question, it will be *assumed* that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street*, 394 U.S. at 582 (emphasis added).

Petitioners have utterly failed to carry their burden to provide a record to this Court showing that the validity of California's Elder Abuse Act was challenged on federal constitutional or federal statutory grounds in the proceedings below. Indeed, as discussed above, no such showing can be made, as the federal questions are now raised for the first time.

Accordingly, the petition for a writ of certiorari must be denied.

B. The California Elder Abuse Act and the Decision Below are Consistent with the Fourth Amendment.

Even assuming *arguendo* that the federal issues presented here were raised or decided below, review by this Court would not be warranted.

California's Elder Abuse Act, as amended in 1991, is designed to protect the elderly and dependant persons from abuse, neglect, or abandonment. *Delaney v. Baker*, 20 Cal. 4th 23, 42 (1999), *citing* California Welfare and Institutions Code § 15600.[8]

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8. Section 15600, which sets forth the legislative declarations and intent of the Elder Abuse Act provides, *inter alia*:

> The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons . . . The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection . . . The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position . . . The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section . . . The Legislature further declares that uniform state guidelines, which specify when county adult protective

(Cont'd)

The Act provides that any local law enforcement agency employee who provides an agency reporting suspected elder abuse[9] with access to the victim of a known or suspected instance of elder or dependant adult abuse shall not incur civil or criminal liability as a result of providing that access. § 15634(b). In *Easton I*, the State appellate court determined that the immunity set forth in § 15634, provided absolute immunity from claims of trespass and false imprisonment made by the petitioners against medical personnel. 80 Cal. App. 4th at 495-496. In *Easton II*, the court found, under the facts in this case, that this immunity protection extended to the respondent law enforcement officers, who entered without a

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(Cont'd)

> service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county . . . Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, local long-term care ombudsman programs, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to Section 15630, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.

9. Elder abuse can arise a number of ways — physical abuse, neglect, abandonment, isolation, financial abuse, deprivation by a care custodian of necessary goods or services, or other treatment that results in physical harm, pain, or mental suffering. (Welfare and Institutions Code §§ 15610.07, 15610.30, 15610.43, 15610.57, and 15610.63.)

warrant in order to allow medical personnel to remove Winchester.

Petitioners argue that the immunity set forth in § 15634(b) — as written and as applied by the court in *Easton II* — "unconstitutionally deprives elder citizens of their right under the Fourth Amendment to be safe and secure in their own homes." Plaintiffs further assert that the appellate court's interpretation of § 15634(b) "appears an absurd reading in light of Fourth Amendment jurisprudence."

Contrary to petitioners' argument, courts have consistently held that warrantless entry into a home does not violate the Fourth Amendment, where the entry is made necessary by exigent circumstances. *Michigan v. Tyler*, 436 U.S. 499, 509 (1978); *United States v. Robertson*, 606 F.2d 853, 859 (9th Cir. 1979); *Johnson v. United States*, 333 U.S. 10, 14-15 (1948); *United States v. Reid*, 69 F.3d 1109, 1113-1114 (11th Cir. 1995).

In *Mincey v. Arizona*, 437 U.S. 385, 392 (1978) this Court recognized that the most urgent emergency situation excusing police compliance with the warrant requirement is the need to protect or preserve life:

> Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid . . . The need to protect and preserve life or avoid serious injury is justification for what would be otherwise illegal absent and exigency or emergency.

Following *Mincey v. Arizona*, both federal and state courts have consistently upheld warrantless emergency entries and

searches based on endangerment to life. *See, e.g., People v. Ray*, 21 Cal. 4th 464, 470 (1999) (no warrant required when law enforcement rendering "emergency aid"); *United States v. Echegoyen*, 799 F.2d 1271 (1986) (*Id.*); *United States v. Hughes*, 993 F.2d 1313 (7th Cir. 1993) (report of woman and child in danger in crack house); *United States v. Gillenwaters*, 890 F.2d 679 (4th Cir. 1989) (stabbing victim); *United States v. Martin*, 781 F.2d 671 (9th Cir. 1985) (explosion in apartment); *Mann v. Cannon*, 731 F.2d 54 (1st Cir. 1984) (open access to controlled substances by children); *United States v. Riccio*, 726 F.2d 638 (10th Cir. 1984) (medical aid to defendant shot by police); *United States v. Jones*, 635 F.2d 1357 (8th Cir. 1980) (report of gunshots); *United States v. Barone*, 330 F.2d 543 (2d Cir. 1964) (screams in the night); *United States v. Searle*, 974 F. Supp. 1433 (M.D. Fla. 1975) (report of gunshots); *United States v. Hogue*, 283 F. Supp. 846 (N.D. Ga. 1968) (report of dead body); *Johnson v. State*, 386 So. 2d 302 (Fla. App. 1980) (report of dead body); *State v. Carlson*, 548 N.W.2d 138 (Iowa 1996) (missing person); *State v. Butler*, 676 S.W.2d 890 (Mo. 1984) (en banc) (gunshot victim); *State v. Mackins*, 47 N.C. App. 168, 266 S.E.2d 694 (1980) (gunshots); *State v. Max*, 263 N.W.2d 685 (S.D. 1978) (gunshots). *United States v. Brand*, 556 F.2d 1312 (5th Cir. 1977) (noting defendant's concession that police officer who assisted ambulance attendants with medical emergency legally entered home); *United States v. Green*, 474 F.2d 1385 (5th Cir. 1973) (indicating deputy fire marshal could validly search apartment to determine cause of fire where ascertaining cause was necessary to assure fire was completely extinguished); *See generally*, "Emergency Circumstances, Police Responses, And Fourth Amendment Restrictions," *Journal of Criminal Law and Criminology*, Winter 1999 pp. 439-441 (collecting cases involving warrantless entry when person in need of medical treatment).

In short, providing immunity to law enforcement officers entering a home without a warrant in order to assist medical personnel rendering assistance to the victim of a known or suspected instance of elder or dependant adult abuse under § 15634(b) is completely consistent with recognized exceptions to the Fourth Amendment warrant requirement established by this and other courts.

Furthermore, the undisputed facts in this case establish that Deputy Hockabout reasonably believed Winchester was in immediate need of medical attention. Therefore, exigent circumstances existed, obviating the need for a warrant.

C. The California Elder Abuse Act is Consistent with 42 U.S.C. § 1395cc.

Petitioners' claim that the Elder Abuse Act is somehow inconsistent with the so-called Patient Self Determination Act warrants little discussion.

As discussed above, this issue was neither raised nor decided in the state court proceedings.

In any case, at no time did Deputy Hockabout see Winchester, who had suffered from dementia for many years, act in any fashion to suggest that she was knowingly denying consent. Furthermore, none of the Del Norte County Sheriff's deputies rendered medical treatment, and at no time while hospitalized did Winchester refuse medical care provided.[10]

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10. There is no evidence that, after arriving at the hospital, Winchester declined medical care or otherwise objected to treatment modalities. (*See also, Easton I*, 80 Cal. App. 4th at 323, under the facts alleged in the complaint the California Court of Appeals in Easton I assumed "Winchester was competent to decline to be admitted to the hospital.")

As petitioners acknowledge at page 6 in their petition for a writ of certiorari, the Elder Abuse Act allows any victim of elder or dependent adult abuse to refuse consent. Hence, there is no conflict between the California Elder Abuse Act and 42 U.S.A. § 1395cc. Because there is no conflict between the Elder Abuse Act and the identified federal statute, certiorari must also be denied as to the second issue presented.

CONCLUSION

For all the above stated reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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